Coalition Opposing the Baldwin Energy Facility

July 23, 2001

Mr. Robert A. Laurie
Commissioner and Siting Committee Presiding Member
California Energy Commission
1516 Ninth St.
Sacramento, CA 94814

Mr. Robert Pernell
Commissioner and Siting Committee Associate Member
California Energy Commission
1516 Ninth St.
Sacramento, CA 94814

Re: Docket Number: 01-SIT-1
Rulemaking to modify rules of practice and procedure for powerplant applications
Initial draft modifications to siting regulations

Dear Commissioners Laurie and Pernell:

The coalition of homeowners associations that opposed Baldwin Energy #1 intervenes to oppose the initial draft modifications to the siting regulations.

For the record, as Commissioner Pernell knows, the coalition represents *all* the communities invested in the creation of a world-class urban park – a vision that was recently threatened by what the Los Angeles Times called "an act of idiocy."

Our coalition extends beyond the thousands of residents and voters of our many diverse communities to include, among others, *all* of our elected political representatives -- Senator Kevin Murray, Assemblyman Herb Wesson, Congresswomen Diane Watson and Maxine Waters, the unanimous Los Angeles County Board of Supervisors and the unanimous Los Angeles City Council. In our fight to defend the park against the proposed power plant, we also mobilized support from the Center for Law in the Public Interest, the Natural Resources Defense Council, The Advancement Project, Community Conservancy International, Heal the Bay, Coalition for Clean Air, Concerned Citizens of South Central Los Angeles and Latino Urban Forum.

We oppose the draft modifications, first, because they are illegal. They violate the Brown Act, sections 54951, 54952(b), 54953(a), 54953(c), 54954, 54954.2, 54955.1, 54957, 54960 and 54960.1**;** the Bagley-Keene Open Meeting Act, sections 11120, 11121, 11121.2, 11125(a), 11125.1(a), 11125.1(b) and 11125.7; and the Warren-Alquist State Energy Resources Conservation and Development Act, section 25214.

We oppose the draft modifications, second, because they are unconstitutional. They violate First Amendment rights to free speech and to petition the Government for redress of grievances, Fifth Amendment rights to due process of law, and Sixth Amendment rights to confront witnesses.

Simply, as a state agency, the Commission has no right to write law. Nor does the Commission have any right to change law without legislative approval.

Operating under law, the Commission has no right to abuse regulations that limit contacts between parties. It has no right to operate in secret by convening conferences, meetings, workshops and site visits without public notice and participation. It has no right to negotiate between parties, nor make deals, in secret, with the public learning the substance and outcome of the negotiations only because a written record is placed into the docket after the fact, after a meeting has already taken place; secret deal making does not encourage public confidence in a written record that may be subject to omission.

Operating under law, the Commission has no right to determine which recommendations by what state agency may be given deference, nor does it have any right to determine whether another state agency is in conflict with state or federal law.

Moreover, under Government Code sections 11445.10, the Commission has no right to restrict the use of witnesses, testimony, evidence and argument, nor does it have any right to limit or eliminate the use of pleadings, intervention, discovery, prehearing conferences and rebuttal. The Commission has no right to prohibit cross examination of witnesses by the public.

We oppose the draft modifications, thirdly, because the Commission offers up as reasons for the change:

> "Too many notices confuse the public"
> "The public gets tired of all the meetings"
> "The current process frustrates people"
> "You should trust the staff"
> "Other agencies have one public hearing"

This reasoning is offensive and insulting. It presumes that the Commission knows what the public wants and knows better than the public.

Our experience proves otherwise. Yes, we are frustrated by the current process – because it is fatally flawed. However, we are not confused. We are not tired of the many meetings needed to defend our communities against idiocy. We do not trust staff. And one public hearing is clearly not enough. In fact, any agency that presumes it is able to divine the public interest from one public hearing should be directed to a remedial reading of Bagley-Keene, section 11120:

> The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

We demand that you comply with law and cease all consideration of the modifications as proposed.

We also demand a public apology for proposing that a public agency attempt to violate law and public trust when it "exists to aid in the conduct of the people's business," according to the Brown and Bagley-Keene acts.

Frankly, as public officials appointed by an elected governor, as government staff paid with tax dollars, the Commission and its staff should be censured for calling to limit public notice, comment and participation.

Further, we challenge you to comply with the letter and spirit of the law by expanding, not limiting, public notice, comment and participation.

The Brown Act, section 54953.7, specifically requires that agencies "allow greater access to their meetings than prescribed by the minimal standards:"

> Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter.

In contrast, the Brown Act does not give agencies permission to adopt policies, rules, programs, devices or other means of circumventing these standards.

We call for expanded public notice, comment and participation based on our experience of the siting process as it currently exists.

For example, consider these failures by the Commission, which did not know:

- The site of the proposed Baldwin plant is protected by a state conservancy.
- Gov. Davis signed the bill that created and funded the conservancy.
- The proposed plant would be drop-shipped into a site ringed by schools and communities built atop ridgelines that would overlook the exhaust stacks, a situation likened to running a hose from the exhaust pipe of a car directly into homes and classrooms.
- At least two active earthquake faults bracket the proposed site.
- The alluvial soil at the site is known to be subject to liquefaction and so unstable that Los Angeles County engineers determined they could not rebuild the Baldwin Hills Dam. That dam failed catastrophically – and the flood helped to carve the entrance to Kenneth Hahn Park immediately adjacent to the site of the proposed power plant.
- Geological studies also proved the alluvial soil so unstable it could not support a housing development one half mile from the proposed plant.

Moreover, until we invited and demanded a second site tour that took the Commission and staff beyond the brown, degraded, oil-soaked industrial site proposed for the power plant, until we turned out in force with every available local and state politician, the Commission had no clue as to how deeply committed our many communities are to plans to convert the oil fields into the largest urban park built in the United States in more than 100 years. And, until we retained legal counsel in time for the second public hearing, the Commission refused to even acknowledge the reality of environmental racism in our communities.

Simply, the siting process as it currently exists is fatally flawed. It is designed to expedite the siting, construction and operation of power plants, no matter what. It presumes approval by a Commission that has not met a power plant it cannot approve. There is no consideration of public opposition. And it relies on staff to abrogate its responsibility for independent analysis in favor of mitigating any and all legal, civic, social, financial, environmental and scientific arguments against a power plant, no matter how compelling.

These failures by the Commission can be mitigated only with increased public notice, comment and participation.

Again, we demand that you comply with law and cease all consideration of any proposal to limit public participation. Again, we challenge you to comply with the letter and spirit of the law by expanding public notice, comment and participation.

Sincerely,

Baldwin Hills Estate Homeowners Association
Baldwin Hills Village Garden Homes Association
Baldwin Neighborhood Homeowners Association
Blair Hills Homeowners Assocation
Cloverdale Terraza Sanchez Weatherford Homeowners Association
Crenshaw Neighbors Homeowners Association
Culver City Homeowners Association
East Culver City Alliance
Expo Neighbors Homeowners Association
Fox Hills Neighborhood
Hyde Park Organizations Empower
Ladera Heights Civic Association
Orange Drive Homeowners Association
Raintree Condo and Townhouse Association
United Homeowners Association
United/Windsor Hills/View Park Community Council
Veronica Sanchez Sycamore Block Club
Village Green Homeowners Association

cc: Gov. Gray Davis
CEC Chairman William Keese
Sen. Kevin Murray
Asm. Herb Wesson
Rep. Diane Watson

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